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Jaco Electronics, Inc.

JACO ELECTRONICS, INC., a New York  
corporation,

Plaintiff,

v.

HYNIX SEMICONDUCTOR, INC., a  
Korean corporation, HYNIX  
SEMICONDUCTOR AMERICA, INC., a  
California corporation, MOSEL VITELIC  
INC., a Taiwanese corporation, MOSEL  
VITELIC CORPORATION, a California

**Filed**

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NORTHERN DISTRICT OF CALIFORNIA  
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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA – SAN JOSE DIVISION

Case No.

**COMPLAINT FOR DAMAGES AND  
INJUNCTIVE RELIEF**

(1) **VIOLATION OF THE  
SHERMAN ACT PURSUANT  
TO 15 U.S.C. § 1**

**BY FAX**

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corporation, NANYA TECHNOLOGY CORPORATION, a Taiwanese corporation, NANYA TECHNOLOGY CORPORATION, USA, a California corporation, WINBOND ELECTRONICS CORPORATION, a Taiwanese corporation, WINBOND ELECTRONICS CORPORATION AMERICA, a Delaware corporation, ELPIDA MEMORY, INC., a Japanese corporation, ELPIDA MEMORY (USA) INC., a Delaware corporation, MITSUBISHI ELECTRIC CORPORATION, a Japanese corporation, MITSUBISHI ELECTRIC AND ELECTRONICS USA, INC., a Delaware corporation, INFINEON TECHNOLOGIES AG, a German corporation, INFINEON TECHNOLOGIES NORTH AMERICA CORPORATION, a Delaware corporation, MICRON TECHNOLOGY, INC., a Delaware corporation, MICRON SEMICONDUCTOR PRODUCTS, INC., an Idaho corporation, NEC ELECTRONICS CORPORATION, a Japanese corporation, NEC ELECTRONICS AMERICA, INC., a California corporation, and DOES 1 through 5,

Defendants.

(2) VIOLATION OF CALIFORNIA'S CARTWRIGHT ACT PURSUANT TO §§ 16700 ET SEQ. CAL. BUS. & PROF. CODE

(3) VIOLATION OF CALIFORNIA'S UNFAIR COMPETITION ACT PURSUANT TO §§ 17200 ET SEQ. OF CAL. BUS. & PROF. CODE

### DEMAND FOR JURY TRIAL

Plaintiff Jaco Electronics, Inc., for its Complaint against defendants Hynix Semiconductor, Inc.; Hynix Semiconductor America, Inc.; Mosel Vitelic Inc.; Mosel Vitelic Corporation; Nanya Technology Corporation; Nanya Technology Corporation (USA); Winbond Electronics Corporation; Winbond Electronics Corporation America; Elpida Memory, Inc.; Elpida Memory (USA), Inc.; Mitsubishi Electric Corporation; Mitsubishi Electric and Electronics USA, Inc.; Infineon Technologies AG; Infineon Technologies North America Corporation; Micron Technology, Inc.; Micron Semiconductor Products, Inc.; NEC Electronics Corporation; NEC Electronics America, Inc. and Doe defendants 1 through 5, alleges, on personal knowledge or information and belief, as follows:

#### **A. Nature of Action**

1. Plaintiff Jaco Electronics, Inc. ("Jaco" or "Plaintiff") brings this action to recover damages it has incurred as a result of long-standing collusion by suppliers of

dynamic random access memory ("DRAM") computer chips. As described in more detail below, in June 2002 the United States Department of Justice announced that it had begun to investigate a conspiracy among the world's DRAM suppliers. During the conspiracy, DRAM suppliers conspired to control production capacity, raise prices or slow their decline, allocate customers, and otherwise unlawfully overcharge their DRAM customers. During that same period of time, Jaco purchased several million dollars of DRAM chips from the conspirators.

2. As a result of the Department of Justice's investigation, five of the world's largest suppliers of DRAM chips have now admitted their involvement in the conspiracy, including Hynix Semiconductor, Inc., Infineon Technologies AG, Elpida Memory, Inc., and Micron Technology, Inc. Micron Technology, Inc. obtained amnesty from criminal prosecution by being the first to admit its participation in the illegal cartel; Infineon Technologies AG, Hynix Semiconductor, Inc., and Elpida Memory, Inc. have agreed to enter guilty pleas and pay fines based on their involvement in the illegal activities. Furthermore, senior officials of Micron Technology, Inc., Hynix Semiconductor, Inc., and Infineon Technologies AG, among others, have pleaded guilty to colluding with their competitors to fix and raise DRAM prices. The Department of Justice investigation is continuing, and additional guilty pleas from other conspirators are expected.

3. Jaco seeks treble damages and injunctive relief to remedy injuries it has sustained as a result of the defendants' illegal activities.

#### **B. Jurisdiction and Venue**

4. Jaco brings this action pursuant to Sections 4, 12, and 16 of the Clayton Act (15 U.S.C. §§ 15, 22, and 26) (2000 suppl. 2) for treble damages and injunctive relief, as well as reasonable attorneys' fees and costs, with respect to the injuries it has sustained arising from violations by the defendants of Section 1 of the Sherman Act, 15 U.S.C. § 1 (2000 suppl. 2).

5. Jaco also brings this action pursuant to Section 16750(a) of the California Business and Professions Code, for injunctive relief and treble damages that Jaco

sustained due to violations by the defendants and their co-conspirators of Section 16700 *et seq.* of the California Business and Professions Code (the “Cartwright Act”). Jaco’s claims are also brought pursuant to Sections 17203 and 17204 of the California Business and Professions Code, to obtain restitution from and an injunction against the defendants due to their violations of Section 17200 *et seq.* of the California Business and Professions Code (the “Unfair Competition Act”).

6. This Court has jurisdiction over this action pursuant to 28 U.S.C. § § 1331 and 1337(a). This Court has supplemental jurisdiction over Jaco’s state law claims pursuant to 28 U.S.C. § 1367 because those claims are related to the federal claims such that they form part of the same case or controversy.

7. This Court has jurisdiction over this action pursuant to the Foreign Trade Antitrust Improvements Act, 15 U.S.C. § 6a (2000 suppl. 2), in that Jaco’s injuries were proximately caused by increased prices for DRAM in the United States.

8. Venue is proper in this judicial district pursuant to 15 U.S.C. §§ 15 and 22, and 28 U.S.C. § 1391(b), (c), and (d), in that at least one of the defendants resides in this judicial district or is licensed to do business or is doing business in this judicial district. Venue as to each defendant also is proper in this judicial district pursuant to the provisions of Sections 16750(a) and 17203 of the California Business and Professions Code. The unlawful conduct undertaken pursuant to the combination and conspiracy alleged herein had and has a direct effect on business within the State of California, and the trade and commerce described below is carried on to a significant degree within the State of California.

9. This Court has in personam jurisdiction over each of the defendants because, *inter alia*, each defendant (a) transacted business throughout the United States, including this district; (b) manufactured, sold, shipped, and delivered substantial quantities of DRAM throughout the United States, including this district; (c) had substantial contacts with the United States; and (d) was engaged in an illegal scheme and price-fixing conspiracy that was directed at and had the intended effect of causing injury

1 to persons and entities residing in, located in, or doing business throughout the United  
2 States.

3 **C. Intradistrict Assignment**

4 10. Because a large number of the defendants maintain their principal places of  
5 business within Santa Clara County, this action arises in Santa Clara County for the  
6 purposes of Civil L.R. 3-2(c), and should be assigned to the San Jose Division.  
7 Concurrent with or shortly after the filing of its Complaint, however, Jaco will file an  
8 Administrative Motion to Consider Whether Cases Should Be Related in the *In re DRAM*  
9 *Antitrust Litigation*, MDL 02-1486 PJH in the United States District Court for the  
10 Northern District of California, San Francisco Division.

11 **D. Parties**

12 11. Jaco is a New York corporation with its principal place of business in  
13 Hauppauge, New York. Jaco is a world-wide distributor of electronic components and  
14 display products, which are used in the manufacture and assembly of electronic products,  
15 with net sales in fiscal year 2006 of \$228.5 million. During the relevant timeframe, Jaco  
16 was a direct purchaser of DRAM from one or more of the defendants. As a direct  
17 purchaser, Jaco frequently negotiated with one or more of the defendants the price of  
18 DRAM and memory modules primarily comprised of DRAM. Furthermore, Jaco made  
19 all purchasing decisions regarding DRAM in its U.S. offices. Defendants' and their co-  
20 conspirators' price-fixing was the proximate cause of artificially-elevated prices actually  
21 paid by Jaco for DRAM delivered both throughout the United States and the world.  
22 During the relevant timeframe, Jaco also negotiated DRAM prices with defendants on  
23 behalf of Jaco's customers. To the extent Jaco was an indirect purchaser of DRAM, the  
24 price of that DRAM was artificially inflated, causing Jaco to pay a higher price.

25 12. Defendant Hynix Semiconductor, Inc., a Korean corporation, maintains its  
26 head offices at San 136-1, Ami-Ri, Bubal-eub, Ichon-si, Kyoungki-do, Korea 467-701.  
27 During the time covered in this complaint, Hynix Semiconductor, Inc., a manufacturer of  
28 DRAM, sold and distributed DRAM throughout the world, including the United States.



1 On information and belief, as a Korea-based manufacturer of DRAM with facilities  
2 throughout the world, Hynix Semiconductor, Inc. manipulated the price of DRAM  
3 charged around the globe, including in the United States, by intentionally restricting the  
4 production capacity of its manufacturing plants located in Asia and directing its  
5 international affiliates, including those located in the United States, to charge collusively-  
6 established prices for DRAM. As a result of Hynix Semiconductor, Inc.'s illegal  
7 activities directed at the United States and elsewhere, Jaco paid artificially-inflated prices  
8 for DRAM.

9 13. Defendant Hynix Semiconductor America, Inc. is a California corporation  
10 located at 3101 North First Street, San Jose, California 95134. Hynix Semiconductor  
11 America, Inc., on information and belief, is a wholly-owned and controlled subsidiary of  
12 defendant Hynix Semiconductor, Inc. (collectively referred to as "Hynix"). During the  
13 time period covered in this complaint, Hynix Semiconductor America, Inc. sold and  
14 distributed DRAM throughout the United States.

15 14. Defendant Mosel Vitelic Inc. is a Taiwanese corporation which maintains  
16 its headquarters at No. 1 Creation Rd. 1, Hsinchu Science Park, Hsinchu, Taiwan, 30077  
17 R.O.C. During the time period covered in this complaint, Mosel Vitelic Inc., a  
18 manufacturer of DRAM, sold and distributed DRAM throughout the world, including the  
19 United States. On information and belief, as a Taiwan-based manufacturer of DRAM  
20 with facilities throughout the world, Mosel Vitelic Inc. manipulated the price of DRAM  
21 charged around the globe, including in the United States, by intentionally restricting the  
22 production capacity of its manufacturing plants located in Asia and directing its  
23 international affiliates, including those located in the United States, to charge collusively-  
24 established prices for DRAM. As a result of Mosel Vitelic Inc.'s illegal activities  
25 directed at the United States and elsewhere, Jaco paid artificially-inflated prices for  
26 DRAM.

27 15. Defendant Mosel Vitelic Corporation is a California corporation located at  
28 3910 North First Street, San Jose, California 95314. Mosel Vitelic Corporation, on

1 information and belief, is a wholly-owned and controlled subsidiary of defendant Mosel  
2 Vitelic Inc. (collectively referred to as "Mosel Vitelic"). During the time period covered  
3 in this complaint, Mosel Vitelic Corporation sold and distributed DRAM throughout the  
4 United States.

5 16. Defendant Nanya Technology Corporation is a Taiwanese corporation  
6 which maintains its headquarters at Hwa Ya Technology Park, 669 Fu Hsing 3rd Rd.  
7 Keuishan, Taoyuan, Taiwan, 333. During the time period covered in this complaint,  
8 Nanya Technology Corporation, a manufacturer of DRAM, sold and distributed DRAM  
9 throughout the world, including the United States. On information and belief, as a  
10 Taiwan-based manufacturer of DRAM with facilities throughout the world, Nanya  
11 Technology Corporation manipulated the price of DRAM charged around the globe,  
12 including in the United States, by intentionally restricting the production capacity of its  
13 manufacturing plants located in Asia and directing its international affiliates, including  
14 those located in the United States, to charge collusively-established prices for DRAM.  
15 As a result of Nanya Technology Corporation's illegal activities directed at the United  
16 States and elsewhere, Jaco paid artificially-inflated prices for DRAM.

17 17. Defendant Nanya Technology Corporation, USA, a California corporation,  
18 is located at 675 E. Brokaw Road, San Jose, California 95112. On information and  
19 belief, Nanya Technology Corporation USA is a wholly-owned and controlled subsidiary  
20 of defendant Nanya Technology Corporation (collectively referred to as "Nanya"). In  
21 addition to its main U.S. office in San Jose, Nanya Technology Corporation operates  
22 sales and technical support offices in San Jose, California, Raleigh, North Carolina, and  
23 Austin, Texas and operates a memory design center in Houston, Texas. During the time  
24 period covered in this complaint, Nanya Technology Corporation USA sold and  
25 distributed DRAM throughout the United States.

26 18. Defendant Winbond Electronics Corporation is a Taiwanese corporation  
27 headquartered at No. 4, Creation Road 3 and No. 9, Li-Shin Road, Science-Based  
28 Industrial Park, Hsinchu, Taiwan, 300, R.O.C. During the time period covered in this

1 complaint, Winbond Electronics Corporation, a manufacturer of DRAM, sold and  
2 distributed DRAM throughout the world, including the United States. On information  
3 and belief, as a Taiwan-based manufacturer of DRAM with facilities throughout the  
4 world, Winbond Electronics Corporation manipulated the price of DRAM charged  
5 around the globe, including in the United States, by intentionally restricting the  
6 production capacity of its manufacturing plants located in Asia and directing its  
7 international affiliates, including those located in the United States, to charge collusively-  
8 established prices for DRAM. As a result of Winbond Electronics Corporation's illegal  
9 activities directed at the United States and elsewhere, Jaco paid artificially-inflated prices  
10 for DRAM.

11 19. Defendant Winbond Electronics Corporation America, a Delaware  
12 corporation, is located at 2727 North First Street, San Jose, California 95134 and is a  
13 wholly-owned subsidiary of Winbond Electronics Corporation (collectively referred to as  
14 "Winbond"). During the time period covered in this complaint, Winbond Electronics  
15 Corporation America sold and distributed DRAM throughout the United States.

16 20. Defendant Elpida Memory, Inc., a Japanese corporation, maintains its  
17 executive offices at Sumitomo Seimei Yaesu Building, 3F, 2-1 Yaesu 2-chome, Chuo-ku,  
18 Tokyo, 104-0028, Japan. During the time period covered in this complaint, Elpida  
19 Memory, Inc., a manufacturer of DRAM, sold and distributed DRAM throughout the  
20 world, including the United States. On information and belief, as a Japan-based  
21 manufacturer of DRAM with facilities throughout the world, Elpida Memory, Inc.  
22 manipulated the price of DRAM charged around the globe, including in the United  
23 States, by intentionally restricting the production capacity of its manufacturing plants  
24 located in Asia and directing its international affiliates, including those located in the  
25 United States, to charge collusively-established prices for DRAM. As a result of Elpida  
26 Memory Inc.'s illegal activities directed at the United States and elsewhere, Jaco paid  
27 artificially-inflated prices for DRAM.  
28



21. Defendant Elpida Memory (USA) Inc., a Delaware corporation, is located at 2001 Walsh Ave, Santa Clara, California, 95050 and is a wholly-owned subsidiary of Elpida Memory, Inc. (collectively referred to as "Elpida"). During the time period covered in this complaint, Elpida Memory (USA) Inc. sold and distributed DRAM throughout the United States.

22. Defendant Mitsubishi Electric Corporation, a Japanese corporation, is headquartered at Tokyo Building, 2-7-3, Marunouchi, Chiyoda-ku, Tokyo 100-8310, Japan. During the time period covered in this complaint, Mitsubishi Electric Corporation, a manufacturer of DRAM, sold and distributed DRAM throughout the world, including the United States. On information and belief, as a Japan-based manufacturer of DRAM with facilities throughout the world, Mitsubishi Electric Corporation manipulated the price of DRAM charged around the globe, including in the United States, by intentionally restricting the production capacity of its manufacturing plants located in Asia and directing its international affiliates, including those located in the United States, to charge collusively-established prices for DRAM. As a result of Mitsubishi Electric Corporation's illegal activities directed at the United States and elsewhere, Jaco paid artificially-inflated prices for DRAM.

23. Defendant Mitsubishi Electric & Electronics USA, Inc., a Delaware corporation, is headquartered at 5665 Plaza Drive, Cypress, CA 90630-0003 and is a wholly-owned subsidiary of Mitsubishi Electric Corporation. During the time period covered in this complaint, Mitsubishi Electric & Electronics USA, Inc. sold and distributed DRAM throughout the United States.

24. Defendant Infineon Technologies AG, a German corporation, has its principal place of business at Am Campeon 1-12, Munich, 85579, Germany. During the time period covered in this complaint, Infineon Technologies AG, a manufacturer of DRAM, sold and distributed DRAM throughout the world, including the United States. On information and belief, as a German-based manufacturer of DRAM with facilities throughout the world, Infineon Technologies AG manipulated the price of DRAM

1 charged around the globe, including in the United States, by intentionally restricting the  
2 production capacity of its manufacturing plants located throughout the world and  
3 directing its international affiliates, including those located in the United States, to charge  
4 collusively-established prices for DRAM. As a result of Infineon Technologies AG's  
5 illegal activities directed at the United States and elsewhere, Jaco paid artificially-inflated  
6 prices for DRAM.

7 25. Defendant Infineon Technologies North America Corporation, a Delaware  
8 corporation and a wholly-owned subsidiary of Infineon Technologies AG (collectively  
9 referred to as "Infineon"), has its principal place of business at 640 N. McCarthy  
10 Boulevard, Milipitas, CA 95035. During the time period covered in this complaint,  
11 Infineon Technologies North America Corporation sold and distributed DRAM  
12 throughout the United States. Recently, Infineon spun-off its DRAM business, which is  
13 now operating as Qimonda, a wholly-owned subsidiary of Infineon Technologies AG.

14 26. Defendant Micron Technology, Inc. is a Delaware corporation with its  
15 principal place of business at 8000 South Federal Way, Boise, Idaho 83707. During the  
16 time period covered in this complaint, Micron Technology, Inc., a designer, developer,  
17 and manufacturer of DRAM, sold and distributed DRAM throughout the world, including  
18 the United States.

19 27. Defendant Micron Semiconductor Products, Inc. is an Idaho corporation  
20 located at 8000 South Federal Way, Boise, Idaho, 83707 and is a wholly-owned  
21 subsidiary of defendant Micron Technology, Inc. (collectively referred to as "Micron").  
22 During the time period covered in this complaint, Micron Semiconductor Products, Inc.  
23 sold DRAM, including through its Crucial Technology retail sales division, to computer  
24 manufacturers and other end users throughout the United States and Europe.

25 28. Defendant NEC Electronics Corporation is a Japanese corporation with its  
26 principal place of business at 1753 Shimonumabe, Nakahara-ku, Kawasaki, Kanagawa  
27 211-8668, Japan. During the time period covered in this complaint, NEC Electronics  
28 Corporation, a manufacturer of DRAM, sold and distributed DRAM throughout the

1 world, including the United States. On information and belief, as a Japan-based  
2 manufacturer of DRAM with facilities throughout the world, NEC Electronics  
3 Corporation manipulated the price of DRAM charged around the globe, including in the  
4 United States, by intentionally restricting the production capacity of its manufacturing  
5 plants located in Asia and directing its international affiliates, including those located in  
6 the United States, to charge collusively-established prices for DRAM. As a result of  
7 NEC Electronics Corporation's illegal activities directed at the United States and  
8 elsewhere, Jaco paid artificially-inflated prices for DRAM.

9         29. Defendant NEC Electronics America, Inc., a California corporation, is a  
10 wholly-owned subsidiary of NEC Electronics Corporation (collectively referred to as  
11 "NEC") with its principal place of business at 2880 Scott Boulevard, Santa Clara,  
12 California 95050. During the time period covered in this complaint, NEC Electronics  
13 America, Inc., a manufacturer of DRAM, sold and distributed DRAM throughout the  
14 world, including the United States.

15         30. Doe defendants 1 through 5 are persons whose identities are as yet  
16 unknown to Jaco and who have participated in the violations of the federal and state  
17 antitrust laws for which Jaco seeks relief, and have performed acts and made statements  
18 in furtherance thereof.

19         31. Various individuals, partnerships, corporations, and associations other than  
20 the defendants named in this complaint (the "Co-conspirators" and jointly with the named  
21 defendants, "Defendants") have participated in the violations of the federal and state  
22 antitrust laws for which Jaco seeks relief, and have performed acts and made statements  
23 in furtherance thereof.

24         32. Whenever in this complaint reference is made to any act, deed, or  
25 transaction of any corporation, the allegation means that the corporation engaged in the  
26 act, deed, or transaction by or through its officers, directors, agents, employees, or  
27 representatives while they were actively engaged in the management, direction, control,  
28 or transaction of the corporation's business or affairs.

**E. Trade and Commerce**

33. During the relevant period, Defendants sold and shipped substantial quantities of DRAM in a continuous and uninterrupted flow of interstate and international commerce to customers located in countries and states other than the countries and states in which Defendants manufacture DRAM.

34. The business activities of Defendants that are the subject of this Complaint were within the flow of, and substantially affected, interstate and international trade and commerce. The global conspiracy, in which the Defendants participated, had a direct, substantial, and reasonably foreseeable effect on United States commerce.

35. During the relevant period, Defendants made most of the DRAM sales in the global market.

**F. Statement of Facts**

36. Defendants manufacture, sell, and distribute memory chips throughout the world. Memory chips store data in a wide variety of computing and electronic devices. Memory chips are used in the manufacture of, and are critical to the functioning of, such devices as personal computers, workstations, servers, printers, fax machines, digital cameras and video recorders, video game equipment, personal digital assistants, and cellular and wireless telephones.

37. DRAM is the dominant, most common form of memory chip. "Random Access Memory" means that the data, stored in the form of 0s and 1s, can be accessed directly from any part of the memory, rather than having to proceed sequentially from some starting place. DRAM is called "dynamic" because it must have its storage cells refreshed or given a new electronic charge every few milliseconds.

38. A DRAM chip is a large-scale integrated circuit with simple structures, and is fairly easy to manufacture. Accordingly, DRAM is a commodity, with each of Defendants' products being freely interchangeable with the products of another company.

39. DRAM is sold in individual chips, or in modules with several chips attached to each module.

1           40.     DRAM sales exceed \$20 billion a year. The world's top four makers of  
2 DRAM control roughly 70% of the market; the top six manufacturers control 96% of the  
3 market.

4           41.     The DRAM industry enjoyed an extended period of prosperity in the mid-  
5 1990s as the PC computer industry boomed. During this time DRAM manufacturers  
6 could not meet the demand for their products. Revenues from DRAM sales nearly tripled  
7 between 1993 and 1995. DRAM manufacturers responded by building substantial new  
8 chip-making capacity. Factories for the manufacture of DRAM chips are referred to as  
9 fabrication plants, or "fabs."

10          42.     In 1996, this new capacity, coupled with demand decline, led to pressure on  
11 Defendants to cut their prices. Defendants responded by illegally conspiring to limit  
12 capacity and artificially fix and raise prices.

13          43.     Specifically, in December 1996, DRAM manufacturers attended a  
14 SyncLink Consortium. SyncLink was a DRAM industry organization whose members  
15 consisted of DRAM suppliers. During this December 1996 meeting, DRAM suppliers  
16 resolved to establish unified strategies to address market concerns. Although the  
17 organization initially appears to have been created to address technology concerns, the  
18 industry reorganized the consortium in January 1999, causing the new president of the  
19 organization to acknowledge publicly that the focus of the group would be to "co-  
20 ordinate instead of develop new technology."

21          44.     Executives from DRAM suppliers met again in Japan in January 1997.  
22 During this meeting the participants agreed that they would need to continue  
23 communicating with each other. The participants also agreed to use an e-mail  
24 distribution software program then known as a reflector e-mail, which permitted industry  
25 executives to exchange information via e-mail quickly and confidentially.

26          45.     Shortly after this meeting, in February 1997, DRAM suppliers curtailed  
27 production at their DRAM manufacturing facilities (known as "fabs"), as part of a  
28 collusive effort to maintain and raise prices.



1           46. This coordinated drop in production had an immediate, but temporary,  
2 effect on prices, which rose during the second quarter of 1997. Prices then began to fall  
3 again in the second half of 1997.

4           47. As DRAM prices continued to fall into early 1998, DRAM manufacturers  
5 held at least two meetings to discuss the problem in April and June. The second meeting,  
6 held on June 25, was called an "Executive Summit" and was attended by industry  
7 executives. One of the topics at the Summit was how to "Manage Price Competition,  
8 Profitability." Upon information and belief, during these meetings, and in  
9 communications before and after these meetings, Defendants discussed supply and  
10 pricing issues, and agreed that they would limit their capacity to artificially decrease the  
11 supply of, and increase, maintain, or control the price of, DRAM chips.

12           48. Between June and September of 1998 every major DRAM manufacturer  
13 announced that it was curtailing or shutting down DRAM production facilities because of  
14 a lack of demand for the product. Hynix's corporate predecessor, Hyundai,<sup>1</sup> and another  
15 Co-conspirator each shut down their facilities for approximately one to two weeks in the  
16 summer of 1998. Other suppliers communicated their intentions to slash production.

17           49. This coordinated withdrawal of production capacity had an immediate  
18 effect on prices, which began to rise in June 1998, and increased steadily throughout the  
19 rest of the year.

20           50. In August 1998, an email circulated among DRAM suppliers, which  
21 warned that during the ramp-up in production of a new DRAM standard being  
22 implemented by Rambus, DRAM vendors "will need a constant flow of information to  
23 help make wise decisions and to walk the fine line between a pleasant shortage and a  
24 disastrous over-supply." A Hyundai executive noted that a shortage would please  
25 DRAM manufacturers because "prices go up."

26  
27 <sup>1</sup> The Hyundai Group's semiconductor subsidiary was named Hyundai Electronics.  
28 In March 2001 Hyundai renamed this subsidiary Hynix Semiconductor. In August 2001  
Hyundai spun off the company.

1           51. A former employee of a Co-conspirator, has admitted that before he left his  
2 former employer in July 1998, he spoke with competitors regarding price issues. He  
3 informed federal authorities that these conversations led to agreements on a "range pact"  
4 that included "the ranges of prices, where each competitor felt that others would price in  
5 the range, and whether each competitor would move prices 'a little' or 'a lot'." Upon  
6 information and belief, this evidence is corroborated by employee's own notes and other  
7 documents.

8           52. DRAM prices continued to climb steadily in 1999. During this time,  
9 Defendants continued their illegal communications with each other about prices, market  
10 share, and supply. In July 1999, a Hyundai executive sent an e-mail to Farhad Tabrizi,  
11 the vice president of marketing for Hyundai and head of the DRAM industry group  
12 SLDRAM Inc. (the successor organization to SyncLink). The e-mail states that "[w]ith  
13 [one of the Co-conspirators] building significant amounts of product, we need to work  
14 with them to limit the supply in the market, otherwise we both will be competing for  
15 market share which will result in an oversupply. We have to meet with [the Co-  
16 conspirator] and discuss our and their production plan, TAM analysis and targeted market  
17 share." In response, another Hyundai employee stated that he had "a connection" with  
18 the Co-conspirator and offered to set up a meeting.

19           53. A short time later, Hyundai and another Co-conspirator based in Korea both  
20 began raising prices at an accelerated rate. Indeed, in September 1999, industry sources  
21 noted that South Korea's DRAM suppliers were raising prices in one-to-two week  
22 intervals.

23           54. Despite their unlawful and secret cooperation to reduce DRAM production  
24 and increase price, Defendants publicly misrepresented that DRAM prices escalated due  
25 to increased demand resulting from strong sales of low-priced PCs incorporating large  
26 quantities of DRAM. In a September 13, 1999, Electronic News article a Co-  
27 conspirator's vice president of marketing said: "Because we see the value PC and free  
28 PCs entering the market at extraordinary numbers, DRAM oversupply has silently gone

1 into a shortage.” Chee-Wai Ho, director of product marketing for memory products at  
 2 Infineon Technologies AG, agreed.

3 55. Because of Defendants’ collusive activities, DRAM prices remained  
 4 artificially inflated from the middle of 1998 through the fall of 2000.

5 56. In August 2000 prices began to drop once again. By mid-2001, every  
 6 major DRAM manufacturer was reporting losses. Their stock prices fell. Once again the  
 7 Defendants responded by conspiring with each other to control production and raise  
 8 prices. Their collusive activities included, but were not limited to, the following:

- 9 • In July 2001, Hynix Semiconductor, Inc. announced plans to cut  
 10 production to boost prices. A spokeswoman for Hynix stated: “We  
 11 understand other companies are also considering cuts.”
- 12 • In August 2001, an executive of Mosel-Vitelic admitted that Taiwan  
 13 DRAM manufacturers had discussed curtailing production in an effort  
 14 to raise prices.
- 15 • Also in August, Thomas Chang at Mosel Vitelic acknowledged talking  
 16 to other Taiwan DRAM manufacturers about reducing supply. “Our  
 17 preliminary agreement is to trim some production starting September.”
- 18 • In November, Kathy Radford, a manager at Micron, acknowledged  
 19 efforts of defendant Infineon and a Co-conspirator to raise prices of  
 20 DRAM, and stated that Micron intended to raise prices for all of its  
 21 OEM customers: “The consensus from all suppliers is that if Micron  
 22 makes the move, all of them will do the same and make it stick.”
- 23 • Alfred Censullo, a former Micron sales manager, also confirmed that  
 24 defendant Micron spoke with competitors about pricing. Censullo  
 25 pleaded guilty in January 2004 to federal charges of obstruction of  
 26 justice, for altering and withholding documents responsive to a grand  
 27 jury subpoena issued to Micron. At his sentencing hearing, Censullo  
 28 acknowledged that these documents consisted of notes that he took

1 during weekly conference calls with other regional sales managers at  
2 Micron, who like Censullo were responsible for customers. During  
3 these calls the managers would discuss price recommendations for  
4 customers and the prices at which competitors would sell their products  
5 to these customers. Censullo's notes reflected this pricing information  
6 and identified communications between Micron and its competitors  
7 about sales and pricing.

8 57. These collusive activities perpetrated by Defendants worked: by the end of  
9 2001, the 128 MB DRAM price had increased by 95% over the November 6, 2001, spot  
10 price.

11 58. Nevertheless, Defendants again publicly, and falsely, attributed the increase  
12 in DRAM price to legitimate market forces. In a December 4, 2001, interview published  
13 on Simmtester.com, Steve Appleton, chief executive officer of Micron, was asked why  
14 prices had recently increased sharply and suddenly. He answered:

15 "I have no idea. There clearly was a belated increase in demand as the seasonal  
16 rebound we had expected two-and-a-half months earlier finally kicked in. And,  
17 clearly the Japanese are cutting back their DRAM production. Even Hynix, which  
18 is so unpredictable, cut some production by temporarily closing its Eugene, Ore.,  
19 fab. When it was running at 40K wafer capacity a month, that fab alone probably  
20 had about 2.5% of the world's DRAM production."

21 59. DRAM price increases, as well as Defendants' conspiracy, continued into  
22 2002. From November 2001 to April 2002, DRAM prices tripled. And in May 2002,  
23 Thomas Chang of Mosel Vitelic stated: "We're trying to encourage a price of US \$3.  
24 That's the consensus . . . You don't need to have a meeting. You just need to have a  
25 phone call. Everybody knows each other. We just said 'try not to sell below US \$3.'"   
26 On the other hand, in a press release issued on April 15, 2002, defendant Hynix  
27 represented that its increased revenues resulted from increased demand in the DRAM  
28 market.

**G. The Department of Justice Investigation**

60. On or about September 4, 2004, Infineon Technologies AG entered into a plea agreement with the government, pursuant to which it agreed to plead guilty to conspiring to fix prices in the DRAM market between July 1999 and June 2002.

61. On April 21, 2005, the Department of Justice announced that it had entered into a plea agreement with Hynix Semiconductor, Inc. pursuant to which Hynix agreed to plead guilty to conspiring to fix prices in the DRAM market between April 1999 and June 2002.

62. On or about October 13, 2005, the Department of Justice announced that it had entered into a plea agreement with a Co-conspirator pursuant to which the Co-conspirator agreed to plead guilty to conspiring to fix prices in the DRAM market between April 1999 and June 2002.

63. Three months later, on January 30, 2006, the Department of Justice announced that it had entered into a plea agreement with Elpida Memory, Inc. pursuant to which Elpida agreed to plead guilty to conspiring to fix prices in the DRAM market between April 1999 and June 2002.

**H. Violations Alleged****FIRST CAUSE OF ACTION****(Violation of Sherman Act Against All Defendants)**

64. Jaco incorporates by reference, as if fully set forth, the allegations of paragraphs 1 through 63 of this Complaint.

65. Beginning in or about January 1997, the exact date being unknown to Jaco, and continuing thereafter at least through 2002 (the "Cartel Period"), Defendants, by and through their officers, directors, employees, agents, or other representatives, entered in a continuing contract, combination or conspiracy to unreasonably restrain trade and commerce in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1 (2000 suppl. 2).

66. Defendants, by their unlawful conspiracy, artificially raised, inflated, and maintained the market price of DRAM as herein alleged.



67. The contract, combination, or conspiracy consisted of a continuing agreement, understanding, and concert of action among Defendants, the substantial terms of which were to fix, raise, maintain, and stabilize the prices of, and/or allocate the market for, DRAM they sold throughout the world, including the United States.

68. Upon information and belief, for the purposes of formulating and effectuating their contract, combination, or conspiracy, Defendants did those things they contracted, combined or conspired to do, including:

- a. participating in meetings and conversations to discuss the prices of and/or allocate the global market for DRAM;
- b. agreeing to manipulate capacity, production, and prices so as to boost sagging DRAM prices in a manner that deprived direct purchasers of free and open competition;
- c. issuing price announcements and price quotations in accordance with the agreements reached; and
- d. selling DRAM to customers throughout the world, including the United States, at artificially inflated and non-competitive prices.

69. The above combination and conspiracy has had the following effects, among others:

- a. price competition in the sale of DRAM by Defendants has been restrained, suppressed, and eliminated throughout the world, including the United States;
- b. prices for DRAM sold by Defendants have been raised, fixed, maintained, and stabilized at artificially high and noncompetitive levels throughout the world, including the United States; and
- c. purchasers of DRAM from Defendants have been deprived of the benefit of free and open competition in the purchase of DRAM.

70. As a direct and proximate result of the unlawful conduct of Defendants in furtherance of their continuing contract, combination, and/or conspiracy, Jaco has been

1 injured in its business and property in that it has paid more for DRAM than it otherwise  
2 would have paid in the absence of the Defendants' unlawful price fixing.

### 3 SECOND CAUSE OF ACTION

#### 4 (Violation of California's Cartwright Act Under § § 16700 Et Seq. Of The California 5 Business & Professions Code Against All Defendants)

6 71. Jaco incorporates by reference, as if fully set forth, paragraphs 1 through 70  
7 of this Complaint.

8 72. Beginning in or about January 1997, the exact date being unknown to Jaco,  
9 and continuing thereafter at least through 2002, Defendants by and through their officers,  
10 directors, employees, agents, or other representatives violated Section 16700 *et seq.* of  
11 the California Business and Professions Code ("Section 16700" or "Cartwright Act") by  
12 entering into and engaging in a continuing unlawful trust in restraint of trade and  
13 commerce, as described above. During this period, Defendants, and each of them, have  
14 effected this unlawful trust, and violated Section 16700, by combining, conspiring, and/or  
15 agreeing to fix, raise, stabilize, and maintain the prices of, and/or allocate the market for,  
16 DRAM at supra-competitive levels. Section 16720 of the Cartwright Act expressly  
17 forbids the creation of such unlawful trusts.

18 73. The purpose of Defendants' unlawful combination, conspiracy, and/or  
19 agreement was to create artificially higher DRAM prices in the marketplace thereby  
20 providing Defendants, and each of them, with substantially higher revenues and profits  
21 than would otherwise have been the case in a truly competitive market.

22 74. In forming, and in furtherance of, this unlawful combination, conspiracy,  
23 and/or agreement, Defendants engaged in acts, practices, and courses of conduct, which  
24 included, but are not limited to, the following:

- 25 a. participating in meetings and/or discussions amongst themselves, as
- 26 discussed more fully above, for the purpose of coordinating DRAM
- 27 production reductions to limit supply and fix, raise, stabilize, and
- 28 maintain the prices of, and/or allocate the market for, DRAM;

- b. participating in meetings, discussions, and/or communications amongst themselves, as discussed more fully above, for the purpose of exchanging information about DRAM prices and setting price ranges for DRAM to fix, raise, stabilize, and maintain the prices of, and/or allocate the market for, DRAM;
- c. participating in meetings, discussions, and/or communications amongst themselves, as discussed more fully above, for the purpose of setting DRAM contract prices for OEM customers to fix, raise, stabilize, and maintain the prices of, and/or allocate the market for, DRAM; and
- d. using their best efforts to ensure that the prices each charged its customers for DRAM were within the price range, or at the same price, agreed to during the meetings, discussions, and/or communications held amongst themselves.

75. As a direct consequence of the Defendants' acts, practices, and course of conduct in implementing the unlawful trust, the following have occurred:

- a. DRAM price competition has been restrained, suppressed, and/or eliminated, including, but not limited to, within and throughout the State of California;
- b. DRAM price has been fixed, raised, maintained, and stabilized at a high and artificial level, including, but not limited to, within and throughout the State of California;
- c. Jaco has been deprived of the benefit of free and openly competitive negotiations for DRAM in the marketplace; and
- d. Jaco has been forced to pay artificially high prices for DRAM for use in its computer systems and network products.

76. As a direct and proximate result of Defendants' unlawful combination, conspiracy and/or agreement, Jaco has been injured in its business and property in that it

1 has to pay more for DRAM than it would have paid in an otherwise free and open  
2 marketplace. Jaco is unable to state its damages with precision at this time, because that  
3 determination will require discovery and accounting analysis of Defendants' books and  
4 records. Nevertheless, under Section 16750(a) of the Business and Professions Code,  
5 Jaco is entitled to interest on the aforementioned sum from the dates of service of this  
6 Complaint until entry of judgment thereon, to its costs of suit, including reasonable  
7 attorneys' fees and treble damages.

### 8 THIRD CAUSE OF ACTION

#### 9 (Unfair Competition Under § § 17200 Et Seq. Of

#### 10 The California Business & Professions Code Against All Defendants)

11 77. Jaco incorporates by reference, as if fully set forth, paragraphs 1 through 76  
12 of this Complaint.

13 78. Jaco brings this action pursuant to Sections 17203 and 17204 of the  
14 California Business and Professions Code, to obtain restitution from Defendants for acts,  
15 as alleged herein, that violate Section 17200 *et seq.* of the California Business and  
16 Professions Code, commonly known as the Unfair Competition Act.

17 79. Beginning in or about January 1997, the exact date being unknown to Jaco,  
18 and continuing thereafter at least through 2002, Defendants by and through their officers,  
19 directors, employees, agents, or other representatives committed, and continue to commit,  
20 acts of unfair competition, as defined by Sections 17200 *et seq.* of the California Business  
21 and Professions Code. Defendants' acts of unfair competition, more fully alleged in  
22 paragraphs 1 through 76 above, included participating in an unlawful combination,  
23 conspiracy, and/or agreement to fix, raise, stabilize, and maintain the prices of, and/or  
24 allocate the market for, DRAM prices and making misrepresentations, or fraudulently  
25 concealing relevant information, concerning the reason for increased DRAM prices.

26 80. Jaco has standing to bring this action, because it purchased DRAM from  
27 Defendants during the period January 1997 to the present. In doing so, Jaco was injured  
28 by Defendants' unlawful actions, because it paid more for DRAM than it otherwise

1 would have, as described more fully above. These higher prices caused Jaco to lose  
 2 money and customers, who could not afford to purchase Jaco's products containing  
 3 artificially high-priced DRAM.

4 81. Defendants' conduct as alleged herein violates Section 17200 *et seq.* The  
 5 unlawful combination, conspiracy, and/or agreement effected by Defendants, as well as  
 6 their acts, omissions, misrepresentations, practices, and non-disclosures in furtherance  
 7 thereof, as alleged herein, constitute a common continuous and continuing course of  
 8 conduct of unfair competition by means of unfair, unlawful, and/or fraudulent business  
 9 acts or practices within the meaning of California Business and Professions Code,  
 10 Section 17200 *et seq.* including, but in no way limited to, the following:

- 11 a. Defendants' violations of 15 U.S.C. § 1 and Section 16700 *et seq.*, of  
 12 the California Business and Professions Code, as set forth in  
 13 Paragraphs 1 through 76, above;
- 14 b. Defendants' acts, omissions, misrepresentations, practices, and non-  
 15 disclosures regarding how they set DRAM prices, as described in  
 16 Paragraphs 1 through 76 above – whether or not in violation of 15  
 17 U.S.C. § 1 and Section 16700 *et seq.* of the California Business and  
 18 Professions Code, and whether or not concerted or independent acts –  
 19 are otherwise unfair, unlawful, or fraudulent;
- 20 c. Defendants' acts and practices, as alleged in paragraphs 1 through 76,  
 21 are unfair to consumers of DRAM in the State of California and  
 22 throughout the United States, within the meaning of Section 17200 *et*  
 23 *seq.*, California Business and Professions Code; and
- 24 d. Defendants' acts and practices, as alleged in paragraphs 1 through 76,  
 25 are fraudulent or deceptive within the meaning of Section 17200 *et*  
 26 *seq.* of the California Business and Professions Code.

27 82. The aforementioned unlawful and unfair business practices of Defendants,  
 28 and each of them, has injured and presents a continuing threat of injury to Jaco.



1 Defendants' conduct has restrained competition in the DRAM market, has caused Jaco to  
 2 pay supra-competitive and artificially-inflated prices for DRAM, and has deceived, and  
 3 may continue to deceive, Jaco with respect to the manner in which the prices charged for  
 4 DRAM have been and will be set. Thus, Jaco is informed and believes that the  
 5 Defendants may continue to persist in this conduct and commit the aforementioned acts  
 6 unless and until the Court orders the Defendants to cease and desist.

7 83. Defendants have been unjustly enriched as a result of their wrongful  
 8 conduct and Defendants' unfair competition. Jaco is accordingly entitled to equitable  
 9 relief, including restitution and/or disgorgement of all revenues, earnings, profits,  
 10 compensation, and benefits in order to restore money lost by Jaco and that may have been  
 11 obtained by Defendants as a result of such unfair business acts and practices, pursuant to  
 12 the California Business and Professions Code, Sections 17203 and 17204. In addition,  
 13 Jaco seeks a permanent injunction enjoining Defendants, and their officers, directors,  
 14 employees, agents, or other representatives, and all others acting in concert with  
 15 Defendants to cease and desist from colluding together to fix, raise, stabilize, and  
 16 maintain the prices of, and/or allocate the market for, DRAM prices and making  
 17 misrepresentations, or fraudulently concealing relevant information, concerning the  
 18 reason for increased DRAM prices.

19 **I. Tolling of the Applicable Statute of Limitations due to**  
 20 **Fraudulent Concealment**

21 84. Jaco incorporates by reference, as if fully set forth, the allegations of  
 22 paragraphs 1 through 83 of this Complaint.

23 85. Jaco had no knowledge of the combination and conspiracy alleged herein,  
 24 or of any facts that might have led to the discovery thereof in the exercise of reasonable  
 25 diligence, until fall 2004 when Infineon Technologies AG entered into a plea agreement  
 26 with the United States Department of Justice, pursuant to which Infineon agreed to plead  
 27 guilty to conspiring to fix prices in the DRAM market between July 1999 and June 2002.  
 28

1 86. Defendants engaged in a successful price-fixing conspiracy concerning  
2 DRAM computer chips, which they affirmatively concealed, at least in the following  
3 respects:

- 4 a. By meeting secretly to discuss prices, and customers and markets, of
- 5 DRAM computer chips sold in the U.S. and elsewhere; and
- 6 b. By agreeing among themselves at meetings and in communications not to
- 7 discuss publicly, or otherwise reveal, the nature and substance of the acts
- 8 and communication in furtherance of the illegal scheme.

9 87. Price increases of DRAM computer chips before and during the Cartel  
10 Period were not unusual. Jaco was therefore conditioned by experience in dealing with  
11 the Defendants of what they believed to be a competitive industry to expect price  
12 increases from time to time.

13 88. Jaco could not have discovered the existence of the combination and  
14 conspiracy alleged herein at an earlier date by the exercise of reasonable due diligence  
15 because of the deceptive practices and techniques of secrecy employed by the Defendants  
16 to avoid detection and affirmatively conceal such violations. Defendants consistently  
17 ascribed their price increases to ordinary market forces and consideration including,  
18 without limitation, falsely attributing price increases to increased demand, shortages in  
19 supply, increased manufacturing costs, increased prices of labor and of raw materials,  
20 and/or insufficient production capacity. Such false statements included, without  
21 limitation:

- 22 a. The statement of a Co-conspirator's vice president of marketing, in a
- 23 September 13, 1999, article, alleged more fully above in paragraph 54, that
- 24 higher prices were attributable to a DRAM shortage, which was concurred
- 25 upon by Chee-Wai Ho, director of product marketing for memory products
- 26 at Infineon Technologies AG; and,
- 27 b. Hynix's April 15, 2002, representation, alleged in paragraph 59, that its
- 28 increased revenues resulted from increased demand in the DRAM market.

89. Defendants also falsely informed their customers that they were unable to sell their products at a lower price due to increased manufacturing costs, increased prices of labor and of raw materials, and insufficient production capacity.

90. Jaco had no reason to disbelieve these statements. Furthermore, most of the explanations provided by Defendants involved non-public and/or proprietary information completely in Defendants' control such that Jaco could not verify their accuracy. Defendants' purported reasons for their price increases of DRAM were materially false and misleading and were made for the purpose of concealing Defendants' anti-competitive scheme as alleged herein. In truth, at all relevant times, the price of DRAM was artificially inflated and maintained as a direct result of the Defendants' anti-competitive scheme, the operation of which was a substantial (but undisclosed) factor in the pricing of DRAM during the relevant period.

91. As a result of the fraudulent concealment of the conspiracy, Jaco asserts the tolling of the applicable statute of limitations affecting Plaintiffs' claims.

#### **J. Damages/Restitution**

92. During the relevant period, Jaco purchased DRAM from Defendants, or their subsidiaries, agents, and/or affiliates, and, by reason of the antitrust violations herein alleged, paid more for such products than it would have paid in the absence of such antitrust violations. As a result, Jaco has sustained damages to its business and property and defendants wrongfully acquired money from Jaco in an amount to be determined at trial.

#### **K. Prayer for Relief**

WHEREFORE, Jaco demands judgment against defendants, and each of them, as follows:

93. A declaration that the unlawful combination and conspiracy alleged herein is an unreasonable restraint of trade of commerce in violation of: Section 1 of the Sherman Act, 15 U.S.C. § 1 (2000 suppl. 2); Sections 16700 *et seq.* and Sections 17200 *et seq.* of the California Business and Professions Code;

1           94.    An injunction enjoining, preliminarily and permanently, Defendants and all  
2 those acting in concert or in active participation with Defendants from continuing the  
3 unlawful combination and conspiracy alleged herein;

4           95.    An award to Jaco of damages, as provided by law and as appropriate, and  
5 joint-and-several judgments in favor of Jaco against defendants, and each of them, in an  
6 amount to be trebled in accordance with the federal and California antitrust laws;

7           96.    For restitution and disgorgement of revenues, earnings, profits,  
8 compensation, and benefits that have been wrongfully taken by defendants from Jaco as  
9 provided by 17200 *et seq.* of the California Business & Professions Code;

10          97.    An award to Jaco for the costs of this suit (including expert fees), and  
11 reasonable attorneys' fees, as provided by law; and

12    ///

13    ///

14    ///

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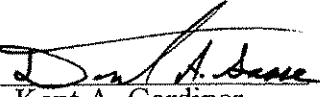
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1           98.    An award to Jaco for such other and further relief as the nature of this case  
2 may require or as this Court deems just, equitable and proper.

3  
4 DATED: February 28, 2007      CROWELL & MORING LLP

5  
6 By:   
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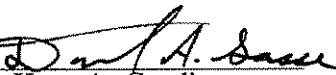


DEMAND FOR JURY TRIAL

99. Jaco demands a trial by jury, pursuant to Federal Rules of Civil Procedure, Rule 38(b), of all triable issues.

DATED: February 29, 2007 CROWELL & MORING LLP

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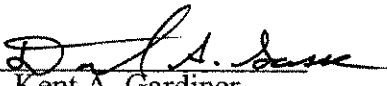
**CERTIFICATION OF INTERESTED ENTITIES OR PERSONS**

Pursuant to Civil L.R. 3-16, the undersigned certifies that as of this date, other than the named parties, there is no such interest to report.

DATED: February 29, 2007

CROWELL & MORING LLP

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